

Oversight Division

Committee On Legislative Research

SUNSET REVIEW

Sunset Review of the Food Pantry Tax Credit
Section 135.647, RSMo

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*Prepared for the Committee on Legislative Research
by the Oversight Division*

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Committee on Legislative Research

Oversight Subcommittee

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THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

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Members of the General Assembly:

The Joint Committee on Legislative Research is required by Section 23.259 (1) (2) to conduct a performance evaluation of the Food Pantry Tax Credit Program, Section 135.647, RSMo to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The report includes Oversight's comments on (1) the sunset, continuation, or reorganization of the program, and on the need for the performance of the functions of the program; (2) the duplication of program functions; (3) the appropriation levels for each program for which sunset or reorganization is recommended; and (4) drafts of legislation necessary to carry out the committee's recommendations pursuant to (1) and (2) above.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may request a copy of the report from the Oversight Division by calling 751-4143.

Respectfully,

Senator Tom Dempsey
Chairman

EXECUTIVE SUMMARY

The Food Pantry Tax Credit program allows a tax credit for persons who make donations of money or food to local food pantries. The credit is for fifty percent of the value of the donation and a taxpayer can earn up to \$2,500 in credits each year. The program has an annual limit of \$2 million that must be apportioned among all applicants if more than \$2 million in credits are earned. The program is set to expire on August 28, 2011.

The utilization of this program has grown steadily since its inception; \$243,711 credits used in 2008, \$459,721 in 2009, and \$793,734 in 2010. These amounts are well below the \$2 million annual cap. The average amount of credit earned per applicant has been roughly \$450, and is used almost exclusively (over 99 percent) by taxpayers filing Individual income tax returns.

Oversight was unable to determine if the program generates additional donations or simply gives taxpayers an additional break for donations that they would have made regardless. Therefore, Oversight is unable to determine if the original intent of the legislation (generation of additional donations of money and food to local food pantries) has been achieved.

Oversight believes the Food Pantry Tax Credit program has provided a valuable resource to local food pantries as well as Missouri families in need of additional food resources. However, in these tough budget times, difficult choices must be made regarding where the limited state resources are spent. The elimination of this tax credit could allow the Department of Revenue to collect up to an additional \$2 million in General Revenue Fund dollars annually to be utilized in the budget process. Therefore, Oversight recommends the Food Pantry Tax Credit Program be allowed to expire.

Chapter 1

Purpose

The General Assembly has provided by law that the Joint Committee on Legislative Research will conduct a performance evaluation of a program subject to the Missouri Sunset Act. The committee shall consider the criteria as listed in Section 23.268, RSMo in determining whether a public need exists for the continuation of a program, or for the performance of the functions of the program. A sunset review is the regular assessment of the continuing need for a state program to exist. A sunset review answers the basic questions of what has happened to this program since its inception and does the State of Missouri continue to “need” the services provided by the program.

The Joint Committee on Legislative Research directed the Oversight Division to conduct a Sunset Review of the Missouri Department of Revenue’s Food Pantry Tax Credit program, Sec. 135.647, RSMo. This report provides an update on the Food Pantry Tax Credit Program as created by SS for HCS for HB 453 in the 2007 legislative session and fulfills the requirement as established by Section 23.268, RSMo.

Oversight’s review addressed, but was not limited to the following:

1. Compiling all data related to the program since its inception
2. Analysis of the events and changes to the program since its inception in 2007.

Scope

The Oversight Division researched the laws and activity regarding the Food Pantry Tax Credit Program from 2007 through 2010. Analysis included a review of Department of Revenue data related to the program

Methodology

The Oversight Division obtained information on the Food Pantry Tax Credit Program through review of statutes, letter correspondence with the Missouri Department of Revenue (DOR), and interviews with DOR staff who work directly with the program.

Background

House Bill 453 from the 2007 legislative session created the Food Pantry Tax Credit and stipulated that the program automatically sunset four years from its effective date. No changes have been made to this section of statute (135.647, RSMo) after the enabling legislation was passed; therefore, with an effective date of August 28, 2007, the program is set to expire on August 28, 2011.

The program allows a tax credit for persons who make donations of money or food to local food pantries. A food pantry is defined as an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and distributes food supplies to Missouri low-income people who would otherwise not have access to food supplies in the area in which the taxpayer claiming the tax credit resides. The credit is for fifty percent of the value of the donation. According to the Department of Revenue, food pantries use the wholesale value for donations of food, which currently is \$1.50 per pound.

The program has an annual cap of \$2 million and each taxpayer is limited to \$2,500 in credits per year. If more than \$2 million in credits are requested in a given year, the Department of Revenue shall perform a systematic apportionment of the credits among all taxpayers filing claims that year. Returns utilizing the tax credit are held by the Department of Revenue until April 15th to ensure that the annual cap of the program is not exceeded. If a taxpayer has more credits than tax liability, the credits may be carried forward for three years. The credits are nonrefundable and nontransferable and may not be carried back to previous years.

Taxpayers who intend to utilize this state tax credit and have included the contribution on their Federal Schedule A (itemized deductions) must first add back the contribution amount on their Missouri Income tax return. This avoids taxpayers from getting a double benefit (first a lower Missouri taxable income by utilizing the donation on their federal itemized deductions, and secondly the tax credit) for the donation. For example, if a Missouri taxpayer included a \$1,000 donation to a local food pantry as a 'Gift to Charity' (Schedule A itemized deduction) in determining their Federal adjusted gross income, the taxpayer must add the donation back in determining their Missouri taxable income. Therefore, the \$500 tax credit allowed for this donation is partially offset by roughly \$60 in Missouri tax from the \$1,000 donation being added back (assuming a 6 percent tax rate) to their income. Therefore, the true net effect to the state of this taxpayer's credit could be assumed to be \$440 (\$500 credit less \$60 tax from an increased taxable income).

The Department of Revenue (DOR) has promoted the program through training, press releases and media events. DOR states their Director and Chief Information Officer visited local food pantries (in Rocky Mount and Moberly) as well as issued a press release (all in December, 2009).

Also, information about the tax credit is posted on the DOR web site. Also, DOR states information about the tax credit was provided to tax practitioners and preparers in the 2007 training session.

Since the inception of the program (passed in 2007 and effective for all tax years beginning on or after January 1, 2007), a total of almost \$1.5 million in credits have been redeemed by Missouri taxpayers. Table 1 below provides details regarding the program since its passage in 2007.

Table 1: Activity of the Food Pantry Tax Credit Program since its inception:

Fiscal Year	Volume	Credits Used	Average Credit received
2007	0	\$0	\$0
2008	546	\$243,711	\$446
2009	1,061	\$459,721	\$433
2010	1,731	\$793,734	\$458
Total	3,338	\$1,497,166	\$449

Source: Department of Revenue

Taxpayers able to utilize this credit include individuals, corporations and trusts. DOR states no trusts have utilized the program. Table 2 below provides a breakdown of the type of taxpayer that have utilized the program since its inception.

Table 2: Credits utilized by taxpayer type.

Fiscal Year	Individual Volume	Individual Credits	Corporate Volume	Corporate Credits	Total Volume	Total Credits
2007	0	\$0	0	\$0	0	\$0
2008	546	\$243,711	0	0	546	\$243,711
2009	1,054	\$451,252	7	\$8,469	1,061	\$459,721
2010	1,720	\$774,319	11	\$19,415	1,731	\$793,734

Source: Department of Revenue

DOR provided a donations-by-county breakout of the FY 2010 activity in the program. St. Louis County had the largest number of claims (427) as well as the largest amount of tax credits awarded (\$171,401). Counties with seven or fewer claims are grouped together as “all others”. Claimants who do not enter a county code on their return are grouped together as “unknown county”.

Table 3: Donations-by-county in FY 2010

County	Number of Claims	Total Food Pantry Credits Issued	Average credit per claim
Audrain	8	\$4,000	\$500
Cape Girardeau	8	\$2,528	\$316
Crawford	9	\$3,008	\$334
Buchanan	10	\$10,511	\$1,051
Johnson	10	\$2,925	\$293
Lincoln	10	\$6,021	\$602
Phelps	10	\$2,933	\$293
Cooper	11	\$3,577	\$325
Dent	12	\$5,564	\$464
Randolph	12	\$5,060	\$422
Nonresident	13	\$5,081	\$423
Stone	15	\$1,962	\$131
Unknown County	19	\$12,232	\$644
Clinton	20	\$5,870	\$294
Cass	23	\$9,539	\$415
Warren	25	\$5,902	\$236
Camden	27	\$10,277	\$381
Christian	39	\$11,156	\$286
Greene	45	\$25,279	\$562

St. Louis City	47	\$21,917	\$466
Jefferson	49	\$20,864	\$426
Clay	65	\$34,751	\$535
Callaway	68	\$15,527	\$228
Platte	86	\$28,738	\$334
St. Charles	88	\$43,690	\$496
Cole	129	\$78,336	\$607
Boone	141	\$89,851	\$637
all Others	134	\$51,180	\$382
Jackson	171	\$104,054	\$609
St. Louis County	427	\$171,401	\$401
TOTAL	1,731	\$793,734	\$458

Source: Department of Revenue

DOR requires a signed MO-FPT form (Food Pantry Tax Credit) be submitted with the return requesting the credit. The food pantry's name and address as well as a signature of a food pantry staff member is required for the taxpayer to receive the credit. A separate MO-FPT form must be submitted for each food pantry receiving a donation. DOR does not, however, input and track the food pantries that have received the donations; therefore, Oversight is unable to provide a listing of food pantries that have received donations that have triggered the credits. Also, DOR does not require food pantries to submit information regarding signed MO-FPT forms directly to them, so verification of the validity of the form and the donation is not possible.

Chapter 2

Comments:

Oversight is unable to determine if the Food Pantry Tax Credit program generates additional donations to local food pantries or simply gives taxpayers an additional break for donations that they would have made regardless. The program is considered one of several “Domestic and Social” programs offered by the state, along with Shelter for Victims of Domestic Violence, Special Needs Adoption, Youth Opportunities, etc. This program has the potential to cost the state \$2 million per year in reduced tax revenue and Oversight is unable to determine if the donations would not have been made to the food pantries if not but for the passage of this tax credit program. Therefore, Oversight is unable to determine if an intent of the program (generation of additional donations of money and food to local food pantries) has been achieved.

Subsection 135.647.8, RSMo, states that the “Department of Revenue shall promulgate rules to implement the provisions of this section.” According to the Department, no administrative rules have been filed with the Office of the Secretary of State for this program. Although the Department of Revenue may have determined the publishing of administrative rules is not warranted, the statutes state that rules shall be promulgated.

Recommendations:

Possible options available to the Missouri General Assembly include letting the program expire or extending the sunset of the program:

- First, the General Assembly could allow the program to expire in August, 2011 by taking no further action regarding this program. This option could potentially save the state up to \$2 million in revenue that may be lost if the Department of Revenue issues all available tax credits. Currently, the annual redemption amount on this program has not exceeded \$793,734, so the annual savings resulting from the expiration of the program should not be considered \$2 million. However, additional credits may be utilized on tax returns filed in FY 2011 that could approach the annual ceiling. A possible negative impact of this action could be reduced donations to local food pantries.
- Second, the General Assembly can extend the sunset up to an additional twelve years (roughly until August 2023).

- Third, the General Assembly could possibly extend the program for a period of time less than the stated twelve years.

If the Missouri General Assembly were to allow the Food Pantry Tax Credit to expire in 2011, taxpayers would still be allowed to make donations to food pantries of their choice; however, the state may save up to \$2 million annually in reduced tax credits.